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August 24, 2021

VIA ELECTRONIC MAIL

Commissioner of Financial Protection and Innovation
Attn: Sandra Sandoval, Regulations Coordinator
300 South Spring Street, 15th Floor
Los Angeles, CA 90013
regulations@dfpi.ca.gov

RE: *Response to Invitation for Comments on Proposed Rulemaking
Commercial Financing Disclosures (PRO 01-18)*

Dear Ms. Sandoval:

We have reviewed the Department of Financial Protection and Innovation's most recent draft regulations and hereby submit this response to the Department's Invitation for Comments.

1. Clarify Any Difference in Meaning Between "Maximum Aggregate Purchase Price" (Section 3022) and "Approved Advance Limit" (Section 2057(a)(1); Section 2071(a)(3)) In the Context of Factoring.

The new proposed regulations appear to use the term "maximum aggregate purchase price" in Section 3022 interchangeably with the term "approved advance limit," which is defined in Section 2057(a)(1) and used in connection with Factors in Section 2071(a)(3). If these two phrases are not intended to be synonymous in the context of Factors, then the meaning of the term "maximum aggregate purchase price" should be clarified.

2. Allow the Factoring "Example Transaction" Disclosure (Per Section 2064) to Include "Total Dollar Cost."

Finance Code section 22803 states that the "example transaction" disclosure made by a Factor should reflect (1) An amount financed, (2) The total dollar cost, (3) The term or estimated term, (4) The method, frequency, and amount of payments, (5) A description of prepayment policies and (6) The total cost of the financing expressed as an annualized

rate. Cal. Fin. Code § 22803(a).

The “example transaction” disclosure set forth in Section 2064 of the proposed regulations does not provide for disclosure of the “total dollar cost” of the proposed transaction. (See §2064(a)(4)(a).) Moreover, Section 2064 now requires the Factor to use the phrase “Annual Percentage Rate” in the example disclosure instead of the term used in the statute, “Cost of Financing Expressed as an Annual Rate.” (Fin. Code 22803(a)(6).)

The “example transaction” disclosure should include a row for “Total Dollar Cost” immediately under the “Funding Provided,” and the title of the row “Annual Percentage Rate (APR)” should be changed to “Total Cost of Financing Expressed as Annualized Rate.” These changes are necessary to track the language of the statute.

3. Allow the “Example Transaction” Disclosure (Per Section 2064) to Use a \$10,000 Sample Advance Amount Instead Of The Full “Approved Advance Limit.”

The proposed regulations allow the Factor to set forth an approved advance limit in its master agreement. However, if the Factor does so, then the “example transaction” disclosure provided by the Factor per Section 2064 of the proposed regulations must use the total approved advance limit as the “amount financed.”¹

For example, if a Factor has a total advance limit of \$400,000 that can be outstanding at any given time over the life of the agreement, the Factor would need to use \$400,000 as the “amount financed” in its sample disclosure, rather than a true example of a single transaction. Such an “example” would be misleading because the total dollar amounts would be much larger than a true “example of a transaction that could occur under the general agreement.” See Cal. Fin. Code §22803. It was not the intent of the statute in providing the option of an “example” of “an amount financed” to require a Factor to use the maximum amount that may be outstanding at any given time in the sample disclosure. See *id.*

A Factor should be permitted to use the \$10,000 sample transaction even where the Factor states in its general agreement that its approved advance limit is higher than \$10,000. Doing so would create more transparency for the consumer, who would understand the comparison with other similar advances.

¹ See §2064(a)(3) (requiring the “*amount financed*” to be used in the sample); §2057(30)(E) (defining “*amount financed*” to be “*the approved advance limit, minus any prepaid finance charge*”); §2057(a)(1) (defining “*approved advance limit*” to mean “*the maximum advance that a financier may provide to a recipient or on the recipient’s behalf in exchange for assignment of outstanding, unpaid legally enforceable claims under a factoring agreement, not including any previous distributions advanced to a recipient or on the recipient’s behalf, to the extent those distributions have been repaid.*”)

4. Revise the “Prepayment” Language in the “Example Transaction” Disclosure (Per Section 2064) to Use the Term “Unpaid Fees” instead of “Unpaid Interest.”

The “example transaction” disclosure set forth in Section 2064 of the proposed regulations requires the Factor to state, “If you repurchase the [description of legally enforceable claim] before the due date, you will not pay any portion of the finance charge other than unpaid interest accrued since disbursement.” (See §2064(a)(8)(C)(ii).) Factors do not always charge interest, so this language will be confusing. We request that this language be revised to say, “If you repurchase the [description of legally enforceable claim] before the due date, you will not pay any portion of the finance charge other than unpaid fees accrued since disbursement.” Examples of such fees would include banking/legal/administrative fees.

5. Clarify the Frequency of Disclosures in the Factoring Context.

We previously requested, and renew here our request, that a clause be added specifying that where there is a sample disclosure made pursuant to a general agreement to purchase accounts receivable and purchase orders, amounts funded over time pursuant to such an agreement shall not each require a new disclosure form for each individual advance unless the terms have changed. Moreover, it should be clarified that the disclosure requirements apply to all new general agreements and shall not require the creation of a disclosure for already existing general agreements.

6. Clarify the term “Commercial Credit Transaction.”

Section 3010 refers to a “commercial credit transaction,” a term which is neither defined nor used anywhere else in the regulations. We suggest clarifying the meaning of that term.

We appreciate this opportunity to provide feedback on the proposed regulations.

Sincerely,



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